

RE LIM CHENG PENG

[O.C.J. (Wee Chong Jin C.J., Lai Kew Chai & Chua JJ.)
November 13, 1987]

[Singapore — Originating Motion No. 78 of 1987]

Legal Profession — Reinstatement on the roll of advocates and solicitors — Application for — Merits of application — Lawyer ceased practice voluntarily — Delay in disciplinary proceedings — Special facts — Legal Profession Act (Cap. 161, 1985 Ed.), s. 99.

In this case Lim Cheng Peng, a former advocate and solicitor of the Supreme Court of Singapore, applied to the High Court to have his name reinstated on the roll of advocates and solicitors. This application was made under section 99 of the Legal Profession Act.

Lim Cheng Peng was admitted as an advocate and solicitor in 1965. He immediately began his practice. However, on January 31, 1978, he voluntarily ceased practice after some investigations were made about his clients' accounts.

He was convicted for an offence under section 409 of the Penal Code (Cap. 103) on February 28, 1981.

There was some delay in the disciplinary proceedings that were brought against Lim Cheng Peng. However, on April 9, 1984, he was ordered to be struck off the roll.

On July 17, 1987, Lim Cheng Peng took out this originating motion.

Held: (1) unless there are exceptional circumstances, as a general rule, no solicitor who has been struck off the roll ought to contemplate taking out an application under section 99 of the Legal Profession Act before the expiration of five years from the date of the order of striking off;

(2) in the present case, however, the court could not ignore the fact that Lim Cheng Peng had ceased practice since January 31, 1978 on his own volition. Moreover, some delay had been occasioned in the disciplinary proceedings. In the light of all the circumstances that prevailed in this case, this court thought it fit, although not without some hesitation, that his name should be replaced on the roll.

Cases referred to:

- (1) *Re Chan Chow Wang, a former Advocate and Solicitor* [1983] 2 M.L.J. 30.
- (2) *Re V.K.S. Narayanan* (unreported) (Originating Motion No. 40 of 1980).
- (3) *Re S. Santhiran* (unreported) (Originating Motion No. 67 of 1984).

ORIGINATING MOTION.

T.Q. Lim for the applicant.

Fong Kwok Jeng (Deputy Senior State Counsel) for the Attorney-General.

Mohan Das Naidu for the Law Society.

Cur. Adv. Vult.

A Wee Chong Jin C.J. : This is an originating motion taken out by Lim Cheng Peng, a former advocate and solicitor of the Supreme Court of the Republic of Singapore, under section 99 of the Legal Profession Act.

B Lim Cheng Peng was admitted into the Honourable Society of Gray's Inn in 1959, and called to the English Bar in 1964. He was admitted as an advocate and solicitor of the Supreme Court of Singapore in 1965 and immediately thereafter began his practice. He was also admitted to the roll of advocates and solicitors in Malaysia in 1966. **C** On April 9, 1984, he was struck off the roll of advocates and solicitors here as he had been convicted, on his plea of guilty, on a charge of criminal breach of trust in respect of a sum of \$148,213.27 belonging to his clients.

D *Factual Background*

In October 1977, Lim Cheng Peng was informed that the Law Society would like to inspect his clients' accounts. He made full and complete restitution of all monies misappropriated from the clients' accounts to a firm of accountants appointed by the Law Society to investigate and report on the accounts relating to his practice.

F On January 31, 1978, Lim Cheng Peng voluntarily ceased his practice as an advocate and solicitor. On October 12, 1979, he was made a bankrupt on the petition of Overseas Union Bank Ltd, which had obtained a judgment for a sum of \$8,476.82 and \$330.00 costs in the Subordinate Courts against him.

G On June 20, 1980, the Secretary of the Law Society lodged a complaint against him with the Commercial Crime Division. In July 1980, upon receipt of a message from the Commercial Crime Division, Lim Cheng Peng surrendered himself and, on his own accord, handed over his passport.

H On February 28, 1981, he was charged in the Subordinate Courts with the following:

I "You, Lim Cheng Peng, m/46 years NRIC No. 2034738-D are charged that you between 7 Aug 76 and 30 Jun 77 at Ms Cheng Peng & Co, Room 1906 (19th Floor), Robina House, Shenton Way, Singapore, a law firm, being entrusted with dominion over property, to wit, money in the clients' account of Ms Cheng Peng & Co, in your capacity as an attorney, to wit, an advocate and solicitor of the said Ms Cheng Peng & Co, committed criminal breach of trust of \$148,213.27 cts in respect of the said property and you have thereby committed an offence punishable under section 409 of the Penal Code, Chapter 103."

He pleaded guilty and was sentenced to eight months' imprisonment.

Following on this conviction, a disciplinary committee was appointed on May 7, 1981. On January 5, 1982, the disciplinary committee made its report. In its report, the disciplinary committee found that Lim Cheng Peng had been convicted of a criminal offence implying a defect of character which made him unfit for his profession and that accordingly, cause of sufficient gravity for disciplinary action existed.

It was only on October 15, 1983 that an *ex parte* originating summons was taken out for Lim Cheng Peng to show cause why he should not be dealt with under the provisions of the Legal Profession Act. On October 24, 1983, an order was made for him to show cause.

The originating summons finally came before a court of three judges on April 9, 1984, when the court ordered that Lim Cheng Peng be struck off the roll of advocates and solicitors.

We should perhaps say something about his employment since his conviction. Between December 1, 1981 and December 31, 1983, Lim, Cheng Peng worked for a company as an in-house legal adviser. Between November 1, 1984 and July 31, 1986, he was employed by another company as an in-house legal adviser and corporate planner.

On April 24, 1987, the receiving and adjudication orders made against Lim Cheng Peng on October 12, 1979 were rescinded and annulled. Proofs of debt had been lodged by 17 creditors for sums amounting to \$123,163.65 which had been admitted and paid in full.

On July 17, 1987, Lim Cheng Peng took out this originating motion for an order that his name be restored to the roll of advocates and solicitors.

The law

The provision of law that relates to this application is section 99 of the Legal Profession Act, which reads:

"S.99 (1) The court may, if it thinks fit, at any time order the Registrar to replace on the roll the name of a solicitor whose name has been removed from, or struck off, the roll.

(2) Any application that the name of a solicitor be replaced on the roll shall be by originating motion, supported by affidavit, before a court of 3 judges of whom the Chief Justice shall be one.

A (3) Notice of the motion shall be served on the Society which shall appear at the hearing of the motion and shall place before the court a report which shall include copies of the record of any proceedings as the result of which the name of the solicitor was removed from or struck off the roll and a statement of any facts which have occurred since the name of the solicitor was removed from or struck off the roll and which in the opinion of the Council or any member of it are relevant to be considered or to be investigated in connection with the application."

B

Three points can be noted from this section:

C (1) The court may order restoration "if it thinks fit". A discretion is conferred by the legislature, which must of course be exercised judicially.

D (2) The court may order restoration "at any time". There is no stipulation as to the period of time that must elapse between the date of the order striking the solicitor off the roll and the date of his application for replacement on the roll. This should be contrasted with section 46(4) and (5) of the Legal Profession Act, which are as follows:

E

"S.46(4) A practitioner member may, after a period of 5 years following the date of his conviction or the date he was reinstated to the roll or the date of the expiry of his suspension, whichever is the later, with the leave of a court of 3 judges one of whom shall be the Chief Justice, be eligible for election or appointment as a member of the Council.

F

(5) Where an application for leave under subsection (4) has been refused, the applicant shall not be entitled to make another application under that subsection within a period of 5 years from the date the first-mentioned application was dismissed."

G

(3) The court must consider the views of the Council of the Law Society of Singapore contained in its report placed before the court under section 99(3).

H

The court of three judges in originating motion 26 of 1982, entitled *In the Matter of Chan Chow Wang, a former Advocate and Solicitor*⁽¹⁾, said:

I

"In principle sentences of exclusion from the legal profession need not be exclusive for ever. On the other hand the court has a duty to perform to the suitors of the court and to the profession of the law to take care that those who are re-admitted to it are persons on whose integrity and honour reliance may be placed. The court should also, in the public interest, on all the material before it be satisfied that the applicant is not likely to repeat the same offence or any other offence of a similar nature in the discharge of his professional duties before restoring him to the roll.

Exercise of the court's discretion

In support of his application, Lim Cheng Peng filed in this originating motion eight affidavits by practising advocates and solicitors and three affidavits by company directors testifying to his good conduct and character both before and after the order striking him off the roll. We accepted these character references as they were not controverted.

In paragraph 7 of its report, the Law Society set out its view thus :

"The Council of the Law Society of Singapore has considered the fact that the applicant has made full restitution and has on his own accord ceased practice since 31st January 1978 and considering other relevant circumstances will not oppose the present application."

Mr Fong Kwok Jen, who appeared for the Attorney General, on whom the application was also served, indicated to the court that the Attorney General had no objections to Lim Cheng Peng's application.

We felt a measure of concern over one matter. Lim Cheng Peng was struck off the roll on April 9, 1984. This application was taken out on July 17, 1987. The intervening period between these two dates was therefore approximately three years three months only.

In *Chan Chow Wang's* case⁽¹⁾, the court refused his application because it was premature. The court there said :

"After he was struck off the roll here in November 1974 he continued to practise in Malaysia until November 1979 having been permitted to practise there even though the Bar Council of Malaysia were aware that he had been disbarred here. In those five practising years in Malaysia there has been no complaint which would warrant disciplinary proceedings against him and from the affidavits of practising advocates and solicitors in Malaysia he had conducted himself honourably. Although it is now nearly nine years since his name has been struck off the roll, he has been effectively unable to practise his profession for only three and a half years.

In our opinion, having regard to all the material now before us, the application is premature and should not be allowed and accordingly it is dismissed. We make no order as to costs."

Subsequently, Chan Chow Wang took out another application (originating motion 87 of 1984) on December 8, 1984. That was heard on February 11, 1985 when the court ordered that he be restored to the roll.

A In two other cases where the court ordered restoration to the roll, the intervening period in each case was at least five years. In *V. K. S. Narayanan's* case,⁽²⁾ the solicitor was struck off the roll on July 4, 1974. The application to restore him to the roll (originating motion 40 of 1980) was taken out on June 23, 1980. The order of restoration was made on September 8, 1980. In *S. Santhiran's* case,⁽³⁾ the solicitor was struck off the roll on April 23, 1979. The application to restore him to the roll (originating motion 67 of 1984) was taken out on October 15, 1984. That was heard on March 11, 1985 when an order of restoration was made by the court.

We are of the view that unless there are exceptional circumstances, we would say that, as a general rule, no solicitor who has been struck off the roll ought to contemplate taking out an application under section 99 of the Legal Profession Act before the expiration of five years from the date of the order of striking off.

In the present case, however, we could not ignore the fact that Lim Cheng Peng had ceased practice since January 31, 1978 on his own volition. Moreover, some delay had been occasioned in the disciplinary proceedings. In the light of all the circumstances that prevailed in this case, we thought it fit, although not without some hesitation, that his name should be replaced on the roll. We would emphasize that this case turned entirely on its own special factual situation and should not be regarded as a precedent by those who might be minded to make such an application before the expiration of five years from the date of the order of striking off.

As counsel for the Law Society and the Attorney-General did not wish to have their costs of these proceedings, we made no order as to costs.

Order accordingly.

Solicitors: *T.Q. Lim & Co.*